

AMENDED IN SENATE APRIL 22, 2014

AMENDED IN SENATE APRIL 7, 2014

SENATE BILL

No. 960

Introduced by Senator Morrell

February 6, 2014

An act to ~~add~~ *amend* Section ~~4310.5 to 4315~~ of the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 960, as amended, Morrell. Pharmacy.

Existing law, the Pharmacy Law, provides for the regulation and licensure of pharmacists by the California State Board of Pharmacy. Existing law authorizes the executive officer of the board, or his or her designee, to issue a letter of admonishment to a licensee for the failure to comply with specified requirements. Existing law requires a letter of admonishment to be in writing, and sets forth procedures to contest or comply with a letter of admonishment.

This bill would further authorize the executive officer of the California State Board of Pharmacy, or his or her designee, to issue a letter of admonishment to an applicant for licensure who has committed any violation of law that the board deems, in its discretion, does not merit the denial of a license or require probationary status. The bill would authorize a letter of admonishment to be issued concurrently with a license.

~~Existing law, the Pharmacy Law, provides for the regulation and licensure of pharmacists by the California State Pharmacy Board. Existing law authorizes the board to refuse to license an applicant guilty of unprofessional conduct or to issue, at its sole discretion, a~~

probationary license to an applicant who has met all other licensure requirements:

~~This bill would authorize the board to issue a license to an applicant who has committed minor violations that the board deems, in its discretion, do not merit the denial of a license or require probationary status, and to concurrently issue a public letter of reprimand, as specified. The bill would require the letter of reprimand to, among other things, describe in detail the nature and facts of the violation and inform the licensee that he or she may accept the letter of reprimand without challenge or, within 30 days of service of the letter, submit a written request for an office conference to contest the letter of reprimand. The bill would require the executive director of the board, or his or her designee, to hold an office conference with the licensee and his or her legal counsel or authorized representative, if any, within 30 days of receipt of the request, as specified. The bill would authorize the executive officer, or his or her designee, to affirm, modify, or withdraw the letter of reprimand and would require the executive officer, or his or her designee, to provide the licensee with a written decision within 14 calendar days from the date of the office conference. The bill would require a letter of reprimand issued concurrently with a board license to be purged 3 years from the date of issuance, as specified. The bill would require a letter of reprimand to be disclosed to an inquiring member of the public and posted on the board's Internet Web site.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4315 of the Business and Professions
- 2 Code is amended to read:
- 3 4315. (a) The executive officer, or his or her designee, may
- 4 issue a letter of admonishment to a licensee for failure to comply
- 5 with Section 733, for failure to comply with this chapter or
- 6 regulations adopted pursuant to this chapter, or for failure to
- 7 comply with Division 116 (commencing with Section 150200) of
- 8 the Health and Safety Code, directing the licensee to come into
- 9 compliance.
- 10 (b) *The executive officer, or his or her designee, may issue a*
- 11 *letter of admonishment to an applicant for licensure who has*
- 12 *committed any violation of law that the board deems, in its*

1 *discretion, does not merit the denial of a license or require*
2 *probationary status under Section 4300. The letter of*
3 *admonishment may be issued concurrently with a license.*

4 ~~(b)–~~

5 (c) The letter of admonishment shall be in writing and shall
6 describe in detail the nature and facts of the violation, including a
7 reference to the statutes or regulations violated.

8 ~~(e)–~~

9 (d) The letter of admonishment shall inform the licensee *or*
10 *applicant* that within 30 days of service of the order of
11 admonishment the licensee *or applicant* may do either of the
12 following:

13 (1) Submit a written request for an office conference to the
14 executive officer of the board to contest the letter of admonishment.

15 (A) Upon a timely request, the executive officer, or his or her
16 designee, shall hold an office conference with the licensee *or*
17 *applicant* ~~or the licensee's~~ *his or her* legal counsel or authorized
18 representative. Unless so authorized by the executive officer, or
19 his or her designee, no individual other than the legal counsel or
20 *his or her* authorized representative ~~of the licensee~~ may accompany
21 the licensee *or applicant* to the office conference.

22 (B) Prior to or at the office conference, the licensee *or applicant*
23 may submit to the executive officer declarations and documents
24 pertinent to the subject matter of the letter of admonishment.

25 (C) The office conference is intended to be an informal
26 proceeding and shall not be subject to ~~the provisions of the~~
27 Administrative Procedure Act (Chapter 3.5 (commencing with
28 Section 11340), Chapter 4 (commencing with Section 11370),
29 Chapter 4.5 (commencing with Section 11400), ~~and~~ *or* Chapter 5
30 (commencing with Section 11500) of Part 1 of Division 3 of Title
31 2 of the Government Code).

32 (D) The executive officer, or his or her designee, may affirm,
33 modify, or withdraw the letter of admonishment. Within 14
34 calendar days from the date of the office conference, the executive
35 officer, or his or her designee, shall personally serve or send by
36 certified mail to the licensee's *or applicant's* address of record
37 with the board a written decision. This decision shall be deemed
38 the final administrative decision concerning the letter of
39 admonishment.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

(2) Comply with the letter of admonishment and submit a written corrective action plan to the executive officer documenting compliance. If an office conference is not requested pursuant to this section, compliance with the letter of admonishment shall not constitute an admission of the violation noted in the letter of admonishment.

~~(d)~~

(e) The letter of admonishment shall be served upon the licensee *or applicant* personally or by certified mail at ~~the licensee's~~ *his or her* address of record with the board. If the licensee *or applicant* is served by certified mail, service shall be effective upon deposit in the United States mail.

~~(e)~~

(f) The licensee *or applicant* shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.

~~(f)~~

(g) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:

(1) Issue a citation pursuant to Section 125.9, 148, or 4067, or pursuant to Section 1775 of Title 16 of the California Code of Regulations.

(2) Institute disciplinary proceedings pursuant to Article 19 (commencing with Section 4300).

~~SECTION 1. Section 4310.5 is added to the Business and Professions Code, to read:~~

~~4310.5. (a) Notwithstanding subdivision (c) of Section 4300, the board may issue a license to an applicant who has committed minor violations that the board deems, in its discretion, do not merit the denial of a license or require probationary status under Section 4300, and may concurrently issue a public letter of reprimand.~~

1 ~~(b) The letter of reprimand shall be in writing and shall describe~~
2 ~~in detail the nature and facts of the violation, including a reference~~
3 ~~to the statutes or regulations violated.~~

4 ~~(c) The letter of reprimand shall inform the licensee that within~~
5 ~~30 days of service of the letter of reprimand the licensee may do~~
6 ~~either of the following:~~

7 ~~(1) Submit a written request for an office conference to the~~
8 ~~executive officer of the board to contest the letter of reprimand.~~

9 ~~(A) Within 30 days of receipt of the request, the executive~~
10 ~~officer, or his or her designee, shall hold an office conference with~~
11 ~~the licensee and the licensee's legal counsel or authorized~~
12 ~~representative, if any. Unless authorized by the executive officer,~~
13 ~~or his or her designee, no individual other than the legal counsel~~
14 ~~or authorized representative of the licensee may accompany the~~
15 ~~licensee to the office conference.~~

16 ~~(B) Prior to or at the office conference, the licensee may submit~~
17 ~~to the executive officer, or his or her designee, declarations and~~
18 ~~documents pertinent to the subject matter of the letter of reprimand.~~

19 ~~(C) The office conference is intended to be an informal~~
20 ~~proceeding and shall not be subject to the provisions of the~~
21 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
22 ~~Section 11340), Chapter 4 (commencing with Section 11370),~~
23 ~~Chapter 4.5 (commencing with Section 11400), and Chapter 5~~
24 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
25 ~~2 of the Government Code).~~

26 ~~(D) The executive officer, or his or her designee, may affirm,~~
27 ~~modify, or withdraw the letter of reprimand. Within 14 calendar~~
28 ~~days from the date of the office conference, the executive officer,~~
29 ~~or his or her designee, shall personally serve or send by certified~~
30 ~~mail to the licensee's address of record with the board a written~~
31 ~~decision. This decision shall be deemed the final administrative~~
32 ~~decision concerning the letter of reprimand.~~

33 ~~(E) Judicial review of the decision may be had by filing a~~
34 ~~petition for a writ of mandate in accordance with the provisions~~
35 ~~of Section 1094.5 of the Code of Civil Procedure within 30 days~~
36 ~~of the date the decision was personally served or sent by certified~~
37 ~~mail. The judicial review shall extend to the question of whether~~
38 ~~or not there was a prejudicial abuse of discretion in the issuance~~
39 ~~of the letter of reprimand.~~

1 ~~(2) The licensee may accept the letter of reprimand without~~
2 ~~challenge. The board shall inform the licensee that the letter of~~
3 ~~reprimand shall be purged after three years if no letter of~~
4 ~~admonishment, citation, notice of correction, or disciplinary action~~
5 ~~is initiated by the board within those three years.~~

6 ~~(d) The letter of reprimand shall be served upon the licensee~~
7 ~~personally or by certified mail at the applicant's address of record~~
8 ~~with the board. If the applicant is served by certified mail, service~~
9 ~~shall be effective upon deposit in the United States mail.~~

10 ~~(e) A public letter of reprimand issued concurrently with a board~~
11 ~~license shall be purged three years from the date of issuance if no~~
12 ~~letter of admonishment, citation, notice of correction, or~~
13 ~~disciplinary action is initiated by the board during the three-year~~
14 ~~period.~~

15 ~~(f) A public letter of reprimand issued pursuant to this section~~
16 ~~shall be disclosed to an inquiring member of the public and shall~~
17 ~~be posted on the board's Internet Web site.~~

18 ~~(g) Nothing in this section shall be construed to affect the~~
19 ~~board's authority to issue an unrestricted license.~~